

TOBACCO PRODUCTS TAX ACT (EXCERPT)
Act 327 of 1993

205.431 Sale or solicitation of orders to be shipped, mailed, sent, or brought into state; license required; sales conducted through Internet, by telephone, or mail-order transaction; affirmation; notice to be located on package; purchasers responsible to pay unpaid state taxes on cigars; sign; definitions.

Sec. 11. (1) A person, either as principal or agent, shall not sell or solicit a sale of a tobacco product to be shipped, mailed, or otherwise sent or brought into the state, to a person not a licensed manufacturer, licensed wholesaler, licensed secondary wholesaler, licensed vending machine operator, licensed unclassified acquirer, licensed transporter, or licensed transportation company, unless the tobacco product is to be sold to or through a licensed wholesaler.

(2) All sales conducted through the Internet, by telephone, or in a mail-order transaction shall not be completed unless, before each delivery of cigarettes is made, whether through the mail, through a transportation company, or through any other delivery system, the seller has obtained from the purchaser an affirmation that includes a copy of a valid government-issued document that confirms the purchaser's name, address, and date of birth showing that the purchaser is at least the legal minimum age to purchase cigarettes; that the cigarettes purchased are not intended for consumption by an individual who is younger than the legal minimum age to purchase cigarettes; and a written statement signed by the purchaser that affirms the purchaser's address and that the purchaser is at least the minimum legal age to purchase cigarettes. The statement shall also confirm that the purchaser understands that signing another person's name to the affirmation is illegal; that the sale of cigarettes to individuals under the legal minimum purchase age is illegal; and that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of the state of Michigan. The seller shall verify the information contained in the affirmation provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy, fax copy, or other image of the valid, government-issued identification stating the date of birth or age of the purchaser.

(3) All invoices, bills of lading, sales receipts, or other documents related to cigarette sales conducted through the internet, by telephone, or in a mail-order transaction shall contain the current seller's valid Michigan sales tax registration number, business name and address of the seller, and a statement as to whether all sales taxes and taxes levied under this act have been paid. All packages of cigarettes shipped from a cigarette seller to purchasers who reside in Michigan shall clearly print or stamp the package with the word "CIGARETTES" on the outside of all sides of the package so it is clearly visible to the shipper. In addition, the package shall contain an externally visible and clearly legible notice located on the same side of the package as the address to which the package is delivered, as follows:

"IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS REPORTED UNDER FEDERAL LAW THE SALE OF THESE CIGARETTES TO OUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."

If an order is made as a result of advertisement over the Internet, the tobacco retailer shall request the electronic mail address of the purchaser and shall receive payment by credit card or check before shipping. This subsection and subsection (2) do not apply to sales by wholesalers and unclassified acquirers.

(4) The deliverer of the cigarettes is required to obtain proof from a valid government-issued document that the person signing for the cigarettes is the purchaser.

(5) Beginning November 1, 2012, a retailer that is not licensed as an unclassified acquirer, retail importer of tobacco products other than cigarettes, shall post a sign, visible to the public inside the retail establishment that informs purchasers of cigars through catalog sales or Internet sales of their responsibility to pay all applicable unpaid state taxes on those cigars.

(6) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations, including logical, arithmetic, or memory functions with or on computer data or a computer program, and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardware or wireless communication lines with a computer through remote terminals or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form

acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Credit card" means a card or device issued by a person licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, or issued by a depository financial institution as defined in section 1a of the mortgage brokers, lenders, and services licensing act, 1987 PA 173, MCL 445.1651a, under a credit card arrangement.

(f) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(g) "Internet" means the connection to the World Wide Web through the use of a computer, a computer network, or a computer system.

(h) "Sale conducted through the Internet" means a sale of, a solicitation to sell, a purchase of, or an offer to purchase cigarettes conducted all or in part by accessing an Internet website.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004;—Am. 2012, Act 325, Imd. Eff. Oct. 9, 2012;—Am. 2016, Act 86, Imd. Eff. Apr. 19, 2016.